



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2022-0612; FRL-10300-02-R8]

Approval and Promulgation of Implementation Plans; Colorado; Revisions to Code of Colorado Regulations; Regulation Number 3

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the majority of revisions to Regulation Number 3 of the Code of Colorado Regulations (CCR) submitted to the EPA by the State of Colorado on March 22, 2021. The revisions that the EPA is finalizing approval on include updated references to other sections of the CCR that were moved to a new location, as well as changes to Regulation 3 to reflect digitalization of public notice and comment procedures. The EPA is not finalizing approval of revisions that reflect changes made by Colorado to update dates of incorporation by reference (IBR) of sections of the Code of Federal Regulations (CFR) for the reasons outlined in section I of the preamble of this final rule. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R08-OAR-2022-0612. All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>,

or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Matthew Lang, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6709, email address: lang.matthew@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” means the EPA.

I. Background

The background for this action is discussed in detail in our November 7, 2022 proposal.¹ In that document we proposed to approve a State Implementation Plan (SIP) revision submitted by Colorado which included changes to Regulation 3, Parts A, B, and C. The revisions to Regulation 3, Part A were originally intended to be finalized as an update to the date of IBR from November 29, 2013 to December 11, 2014 of Global Warming Potentials as codified in 40 CFR part 98, subpart A, table A-1. This date of IBR was meant to be added in both sections I.B.10 and I.B.44.b.(i) of Part A. However, it was determined that the final version of Regulation 3, Part A, which was inserted into the CCR, only showed the removal of the November 29, 2013 date without its necessary replacement with the updated date of IBR. The EPA is not able to approve the revised date into the SIP since it was not formally included in Colorado’s regulations. Colorado is currently going through its state rulemaking process to add the revised date to section I.B.10 of Part A. Therefore, in order to prevent the deletion of the existing date of IBR without having a replacement date, the EPA will not take final action on the revisions to Regulation 3, Part A, section I.B.10 in this final rule. Further, while the revised date was properly included in the final version of section I.B.44 of Part A that was inserted into the CCR, the EPA will also not take final action on the revisions to section I.B.44 in this final rule in order

¹ Approval and Promulgation of Implementation Plans; Colorado; Revisions to Colorado Code of Regulations; Regulation Number 3, 87 FR 66985 (November 7, 2022).

to prevent conflicting dates of IBR between sections I.B.10 and I.B.44. Once Colorado has submitted revisions showing the revised date in section I.B.10 of Part A as having been formally inserted into the CCR, then the EPA will propose to take action on the revisions that update the dates of IBR in both sections I.B.10 and I.B.44.

In this action, the revisions to Regulation 3, Parts B and D are being finalized as proposed in our November 7, 2022 proposal. In that rule, we proposed to approve those revisions to Regulation 3, Parts B and D because they were prepared in accordance with the requirements in section 110 of the CAA.

The EPA held a 30-day comment period on the proposed rulemaking beginning on November 7, 2022 and closing on December 7, 2022. We received a comment on the proposal from one commenter. Our comment summary and response to the comment is below.

II. Response to Comments

Comment: Commenter stated generally that any grammatical errors in Regulation 3, Part B should be corrected for clarity and offered their support of the digital availability of permit application materials.

Response: We thank the commenter and acknowledge their comments. We are not aware of, nor did the commenter specifically highlight, any grammatical errors in the submitted revisions to Regulation 3, Part B. Moreso, we are not aware of any grammatical errors that would change the meaning or substance of the submitted revisions. Therefore, the EPA is finalizing the proposed revisions to Regulation 3, Part B as proposed.

III. Final Action

We are approving revisions to Regulation 3, Parts B, sections III.C, III.C.1.e, III.C.4, and III.D.1 as submitted by the State of Colorado on March 22, 2021. We are also approving revisions to Regulation 3, Part D, sections II.A.11.a(viii), IV, IV.A, IV.A.1, and IV.A.7 submitted by the State of Colorado on March 22, 2021. We are not finalizing approval of revisions to Regulation 3, Part A, sections I.B.10 and I.B.44.b(i) in this action as explained in

section I of this preamble. The EPA intends to address Regulation 3, Part A, sections I.B.10 and I.B.44.b(i) in a future and separate rulemaking action.

IV. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes IBR. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the IBR of Regulation 3, Parts B and D, which include updated references to other sections of the CCR and changes to Regulation 3 to reflect digitalization of public notice and comment procedures, as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by the EPA for inclusion in the State implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.²

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

² 62 FR 27968 (May 22, 1997).

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 12, 2023.

KC Becker,
Regional Administrator,
Region 8.

For the reasons set forth in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. In § 52.320, the table in paragraph (c) is amended by:

a. Under the heading “5 CCR 1001-05, Regulation Number 3, Part B, Concerning Construction Permits”, revising the entry “III. Construction Permit Review Procedures”;

b. Under the heading “5 CCR 1001-05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration”, revising the entries “ “II. Definitions”, and “IV. Public Comment Requirements”.

The revisions read as follows:

§ 52.320 Identification of plan.

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(c) * * *

| Title | State effective date | EPA Effective date | Final rule citation/date | Comments |
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| 5 CCR 1001-05, Regulation Number 3, Part B, Concerning Construction Permits | | | | |
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| III. Construction Permit Review Procedures | 2/14/2021 | [insert date 30 days after date of publication in the Federal Register] | [insert Federal Register citation], [insert date of publication in the Federal Register] | |
| 5 CCR 1001-05, Regulation Number 3, Part D, Concerning Major Stationary Source New Source Review and Prevention of Significant Deterioration | | | | |
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| II. Definitions | 2/14/2021 | [insert date 30 days after date of publication in the Federal Register] | [insert Federal Register citation], [insert date of publication in the Federal Register] | |
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| IV. Public Comment and Hearing Requirements | 2/14/2021 | [insert date 30 days after date of publication in the Federal Register] | [insert Federal Register citation], [insert date of publication in the Federal Register] | |
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